IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9558 of 2004

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD ELECTRICITY CO LTD - Petitioner(s)
Versus
AMBUBHAI SWAMI NAIDU & 1 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner
RULE SERVED for Respondent - 1
MR JB PARDIWALA for Respondent : 2

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/07/2006

ORAL JUDGMENT

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner – Ahmedabad Electricity Co. Ltd. seeks the

following substantive reliefs :

> “[8] The petitioner therefore humbly prays that YOUR LORDSHIPS BE PLEASED to issue writ of or in the nature of certiorari or mandamus or prohibition or any other appropriate writ, order or direction:-
>
> [A] To quash and set aside the illegal action of the learned City Civil Court in entertaining Civil Suit No.1952/2004, as barred by Section 145 of the Electricity Act, 2003;
>
> [B] To hold and declare that the Civil Courts do not have jurisdiction to entertain any civil court and to grant any injunction in respect of any action taken or to be taken under the Electricity Act,2003 as their jurisdiction is barred by Section 145 of the Act;
>
> [C] To quash and set aside the proceedings of Civil Suit No.1952/2004 pending in the Ahmedabad City Civil Court.”

2. The respondent No.1 was using electricity vide

Service No.177199. The premises of the respondent were inspected on 13th July, 2004 and allegedly serious malpractices like unauthorized use of energy and theft of energy were discovered. The supply was, therefore, disconnected on the very same day and assessment was carried out and a notice of demand dated 15th July, 2004 for a sum of Rs.1,76,561=68 had been issued.

3. The respondent No.1, consumer, preferred Civil Suit No.1952/2004 praying for a temporary injunction in mandatory form by Notice of Motion Application.

4. Being aggrieved by the action of the City Civil Court in entertaining the Civil Suit, the petitioner has approached this Court by way of the present petition mainly on the ground that Section 145 of the Electricity Act, 2003 completely bars the jurisdiction of Civil Courts in respect of any action taken or to be taken in pursuance of the Act.

5. Heard Mr.K.B.Pujara, learned advocate on behalf of petitioner. Though served, there is no appearance on behalf of respondent No.2.

6. Learned Advocate for the petitioner has very fairly drawn attention of the Court to a decision rendered by a Division Bench of this

Court in the case of *Torrent Power AEC Ltd. v. Gayatri Intermediates Pvt. Ltd.*, 2006 (2) GLH 375 and submitted that, in view of the said decision, the issue involved in the present petition stands concluded. In the aforesaid decision, this Court has held that, in respect of cases where theft was detected prior to 10th December, 2004, the matters will be governed by the Conditions of Supply and Miscellaneous Charges for supply of Electrical Energy framed by the Gujarat Electricity Company, or by the Ahmedabad Electricity Board, as the case may be. That, since during this period, the consumers were governed by the Conditions of Supply and Miscellaneous Charges and not by the provisions of the new Act, the question of ouster of jurisdiction of Civil Court would not arise in cases where theft was detected before 10th December, 2004. But while deciding the application for interim injunction, the Civil Court shall have to consider the principles laid down by this Court in *Kiran Industries v. G.E.B.*, 1995(2) GLR 1158.

7. Applying the aforesaid principles to the facts of the present case, admittedly, the theft was detected prior to 10th December, 2004, hence, the Civil Court does have the jurisdiction to decide the case. However, while while deciding the application for interim injunction, the Civil Court shall have to consider the principles laid

down by this Court in *Kiran Industries v. G.E.B. (supra)*.

8. For the aforesaid reasons, the petition fails and is accordingly rejected. The ad-interim relief stands vacated. Rule is discharged with no order as to costs.

[HARSHA DEVANI, J.]

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